

A husband's interest in his wife's property does not disqualify him from being a witness in her favor, even when the other party is an administrator who does not elect to testify. *Smith v. Wells*, 70 N. H. 49; *Noyes v. Marston*, 70 N. H. 7; *Chase v. Pitman*, 69 N. H. 423. The effect of Poole's disclaimer is immaterial. Although he cannot be a witness for himself, he may be one for his wife, even if he is a party to the action. *Weston v. Elliott*, 72 N. H. 433.

It cannot be said as a matter of law from the reported facts that there was any legal error in the admission of Storrs' testimony. If White sent Poole to Storrs to arrange for a transfer of the property through him, what Storrs testified to was not hearsay.

The plaintiffs offered to show by Mrs. White what White said concerning the house when Mrs. Poole was not present. Such evidence was inadmissible, for it consists of declarations in White's favor; and notwithstanding they were made while the house was in process of construction, they were not made on the land, nor were they in any way connected with the erection of the house or the purchase of the lot.

Exceptions overruled.

All concurred.

Rockingham, }
Dec. 4, 1906. }

KENT, *Ex'x*, v. HUNT, *Guardian*.

SAME v. SAME.

Where an executor, upon settlement of the testator's guardianship account, is charged *in specie* with certain promissory notes as the property of the wards, and no appeal is taken therefrom, the decree is conclusive upon the executor's subsequent petition for leave to transfer the securities to a new guardian.

PROBATE APPEALS. Facts found, and case transferred without ruling from the April term, 1906, of the superior court, by Chamberlain, J.

May 6, 1905, the plaintiff, as executrix of her husband's will, settled his accounts as guardian of two minors in the probate court. In that accounting she was charged *in specie* for three several notes of the Exeter Manufacturing Company, payable to her husband as guardian. From this decree no appeal was prosecuted. July 25, 1905, upon her petition the court authorized her to trans-

fer to the defendant as guardian, succeeding her husband in that capacity, certain securities named in the petition, but excepting the notes above referred to. From this decree the plaintiff appealed.

Eastman, Scammon & Gardner, for the plaintiff.

Nathan P. Hunt, guardian, *pro se*.

WALKER, J. From the reported facts and the briefs of counsel it appears that the ground of the appeal is, that there is error of law in the decree of the probate court denying the plaintiff's petition, so far as it asks for authority to transfer to the defendant the notes of the Exeter Manufacturing Company. By the decree of May 6, it was determined that George E. Kent's estate was chargeable upon the settlement of his guardianship account with the notes in question *in specie*, and not for their value represented in money. Thereupon the plaintiff held the notes as specific property belonging to the wards. From this decree no appeal was prosecuted. The jurisdiction of the probate court in that matter is unquestioned. The decree bound the wards as well as the plaintiff. It was a final adjudication between parties who, it must be presumed, were properly before the court, upon a matter within the court's jurisdiction. *Simmons v. Goodell*, 63 N. H. 458. Unappealed from, it is so far conclusive that "evidence of facts inconsistent with it is incompetent." *Simmons v. Goodell, supra*. Hence the first decree was of binding force upon the plaintiff's subsequent petition for leave to transfer the securities to the defendant. The attempt to show in this proceeding that the wards' money was improperly or illegally invested in the notes is an attack upon the former subsisting judgment between the same parties in interest. The refusal of the probate court to allow the plaintiff to turn over the notes to the defendant was in effect a reversal of the former decree *pro tanto*, and cannot be sustained. Upon receiving the notes, the defendant will take such action with reference to them as the interests of his wards may seem to require. *Stevens v. Meserve*, 73 N. H. 293.

Case discharged.

All concurred.